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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 BRIAN A ALVES,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

14 Defendant.  
15

CASE NO. 2:15-CV-01624-DWC

ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES PURSUANT TO  
42 U.S.C. § 406(b)

16 Presently before the Court is Plaintiff Brian A. Alves' Motion for Attorney's Fees  
17 Pursuant to 42 U.S.C. § 406(b). Dkt. 23. Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil  
18 Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the  
19 undersigned Magistrate Judge. *See* Dkt. 7.

20 Under 42 U.S.C. § 406(b), the Court may allow a reasonable fee for an attorney who  
21 represented a Social Security Title II claimant before the Court and obtained a favorable  
22 judgment, as long as such fee is not in excess of 25% of the total past-due benefits. *See*  
23 *Grisbrecht v. Barnhart*, 535 U.S. 789 (2002). When a contingency agreement applies, the Court  
24 will look first to such agreement and will conduct an independent review to assure the

1 reasonableness of the fee requested, taking into consideration the character of the representation  
2 and results achieved. *See Grisbrecht*, 535 U.S. at 807, 808. Although the fee agreement is the  
3 primary means for determining the fee, the Court may reduce the fee for substandard  
4 representation, delay by the attorney, or because a windfall would result from the requested fee.  
5 *See Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009) (*citing Grisbrecht*, 535 U.S. at  
6 808).

7 Here, Plaintiff signed a contingency fee agreement agreeing to pay his attorney a fee  
8 equal to 25% of the his past-due benefits. *See* Dkt. 28-4. The representation was not substandard  
9 and the results achieved were excellent. *See* Dkt. 20, 28-3; *Grisbrecht*, 535 U.S. at 808. This  
10 Court reversed and remanded this matter to the Administration for further proceedings and,  
11 following remand and a second hearing, Plaintiff was awarded benefits. *See* Dkt. 20, 28-3. There  
12 is no evidence of an excessive delay by the attorney or that a windfall will result from the  
13 requested fee. Further, Defendant does not object to the requested fee. Dkt. 29.

14 Plaintiff moves for attorney's fees in the amount of \$21,830.50, which is 25% of  
15 Plaintiff's total past-due benefits. *See* Dkt. 28-3. Previously, Plaintiff was awarded an attorney  
16 fee of \$ 12,278.17<sup>1</sup> under the Equal Access to Justice Act ("EAJA"). *See* Dkt. 25, 28-2.<sup>2</sup>  
17 Therefore, Plaintiff is moving for a net attorney's fee award of \$ 9,552.33. Based on Plaintiff's  
18 Motion and supporting documents (Dkt. 28, 28-2, 28-3, 28-4, 28-5, 28-6), and Defendant does  
19 not object to the requested fee (Dkt. 29), the Court orders attorney's fees in the amount of  
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21 <sup>1</sup> The Court notes Plaintiff received an EAJA award of \$ 7,294.40 in this case, *see* Dkt. 25, and an EAJA  
22 award of \$ 4,983.77 in *Alves v. Colvin*, 2:14-cv-478-MJP-JPD (Dkt. 25). Plaintiff has therefore received a total  
EAJA award for work related to this action of \$ 11,022.32. *See Parrish v. Commissioner of Social Security*, 698  
F.3d 1215, 1221 (9th Cir. 2012) (holding that the court must offset all EAJA awards against the § 406(b) award).

23 <sup>2</sup> Plaintiff states he received an EAJA award of \$ 6,038.55 on September 1, 2016 in this case. *See* Dkt. 28.  
24 However, on September 2, 2016, the Court entered an Amended Order awarding Plaintiff EAJA fees in the amount  
of \$ 7,294.40. Dkt. 25. Therefore, the Court finds Plaintiff was awarded \$ 7,294.40 in this case, not \$ 6,038.55.

1 \$9,552.33, minus any applicable processing fees as allowed by statute, be awarded to Plaintiff's  
2 attorney pursuant to 42 U.S.C. § 406(b). After paying the attorney's fee, the Social Security  
3 Administration shall release all remaining funds directly to Plaintiff.

4 Dated this 20th day of March, 2018.

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7 David W. Christel  
8 United States Magistrate Judge  
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